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10/568,084

11/20/2006

Dietrich Haaf

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DREISS, FUHLENDORF, STEIMLE & BECKER
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EXAMINER

CALABRESE, MICHAEL A

ART UNIT

PAPER NUMBER

3637

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/568,084	Applicant(s) HAAF, DIETRICH	
	Examiner MICHAEL CALABRESE	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 15-28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2006/11/20</u> . | 6) <input type="checkbox"/> Other: ____. |

Priority

1. Receipt is acknowledged of papers (DE 103 37 147.8) submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Objections

2. Claim 17 is objected to because of the following informalities: It is suggested the word "supper" in line 1 of the claim be changed to "support". Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 15, 24-25, and 28 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 15 recites, "said side walls having at least one opening" in line 8. It is unclear as presently worded where the at least one opening is. Perhaps it is the applicant's intention to mean, "each of said side walls having at least one opening."

6. As for Claim 24, it is unclear how the openings can be claimed in terms of the prong of a fork lift or lifting truck, as the fork lift or lifting truck was intended use in the depending claim 1. It is unclear if it was applicant's intention to claim the load support in combination with the fork lift or lifting truck, or to describe the openings as being adapted to be wider and higher than a prong of a stacker. Furthermore, there is a lack

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of antecedent basis in the claims for the limitations "the fork-lift" and "the lifting truck".

Perhaps it was the intention of the applicant to describe the prong of the stacker.

7. As for Claim 25, it is unclear where the two parallel openings are located. The claim omits essential structures.

8. As for Claim 28, it is unclear as to what standards the applicant is referring to.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

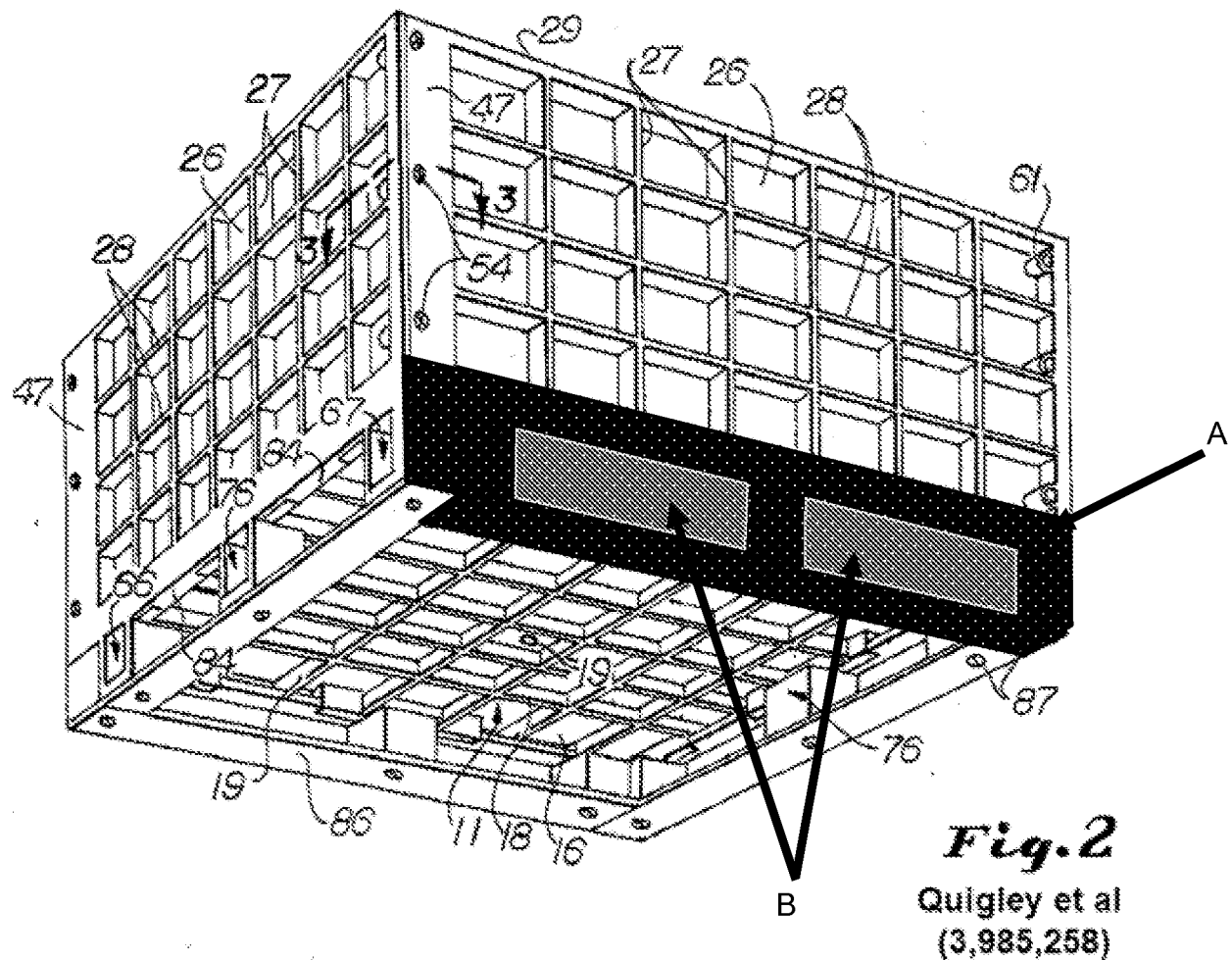
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 15-20, and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roper (US Patent No. 3,709,162) in view of Quigley (US Patent No. 2,544,743)

11. As for Claim 15, Roper is cited for teaching a nestable load support (10; Figures 1-2) capable of disposition by a stacker having prongs, the support comprising: a deck having a central portion (11), a peripheral outer edge (16) and several legs (12) disposed between said central portion (11) and said outer edge (See Figures 1 and 2), wherein each leg (12) is formed by a depression in said deck, each leg (12) having two side walls (18, 19) and a bottom (17), wherein said side walls (18, 19) and said bottom (17) define a trapezoidal cross-section (See Figure 2) (See Col. 2, Line 63 to Col. 3, Line 26) and said outer edge (16) and said central portion (11) being exclusively connected to each other via said side walls (18, 19) and said bottoms (17) of said legs

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(12) (See Figures 1-2). Roper does not explicitly state said side walls of legs having at least one opening capable of receiving each prong of a stacker. Quigley is cited for teaching side walls of legs (A; See marked up Figure 2 below) having at least one opening (B; See marked up Figure 2 below) capable of receiving each prong of a stacker or fork-lift. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the load support of Roper so as to include openings in the sidewalls of the legs capable of receiving each prong of a stacker or fork-lift as taught by Quigley in order to allow for the load support to be carried by a machine when it supports a large load. The limitations, "a stacker having prongs" and "for each prong of the stacker" (lines 8-9) are interpreted in this instance as intended use language. The corresponding structure need not perform the intended functions, but rather, be capable of performing the intended use. In this case, with the teaching of Quigley, Roper's load support is obviously capable of receiving a prong of a fork lift or stacker.



12. As for Claim 16, Roper is further cited for teaching said legs (12) substantially extending along an entire length of said deck, forming a runner (See Figure 1).

13. As for Claim 17, Roper is further cited for teaching at least one said leg (12) is parallel to each outer edge (16) of said deck (See Figure 1).

14. As for Claim 18, Roper is further cited for teaching several legs (12) or runners (12) form a square or rectangle (See Figure 1).

15. As for Claim 19, Roper is further cited for teaching section edges (area of the top surface of the deck adjacent inner sidewall 19) between said side walls (18, 19) and

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said central portion (11) extending parallel to said outer edge (16) of said deck (See Figures 1-2).

16. As for Claim 20, Roper is further cited for teaching the load support having a rectangular or square base surface (bottom of 11; See Figures 1 and 2).

17. As for Claim 23, Roper does not explicitly state the load support is produced from plastic material or from recycled plastic material. Quigley is cited for teaching the load support is produced from plastic material (Col. 1, Lines 5-10). It would have been obvious to a person having ordinary skill in the art at the time of the invention to form the load support of Roper from plastic as taught by Quigley, as it is a relatively inexpensive, yet strong material. Furthermore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to form the load support of Roper from recycled plastic material as it is well known in the art that recycled plastic is both environmentally friendly and economical.

18. As for Claim 24, while it is unclear as to the intention of applicant, for the purpose of this examination, this claim will be treated as if the openings are adapted to be wider and higher respectively, than the prong of the stacker (fork-lift or the lifting truck).

Further, it will be interpreted that the applicant meant to refer to "the stacker" instead of the limitations "the fork-lift or the lifting truck" as there would be no antecedent basis in the claim for the fork-lift or lifting truck. The openings cannot be positively described in relation to a non-positively claimed element such as a prong of the stacker. Roper does not explicitly state that said openings are capable of being wider than a prong of a fork-lift or of a lifting truck (stacker) and said openings are capable of being higher than a

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prong of a fork-lift or of a lifting truck (stacker). Quigley is cited for teaching said openings (B; See marked up Figure 2 above) are capable of being wider than a prong of a fork-lift or of a lifting truck (stacker) and said openings (B; See marked up Figure 2 above) are capable of being higher than a prong of a fork-lift or of a lifting truck (stacker). Quigley teaches in Col. 4, Lines 15-20, that the forks of a fork-lift are inserted into the openings (B; See marked up Figure 2 above), thus obviously necessitating the width and height of the openings to be larger than any respective width and height of fork-lift forks. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the load support of Roper so as to include the openings adapted to be wider than the prong of a fork-lift or of a lifting truck and adapted to be higher than the prong of the fork-lift or of the lifting truck as taught by Quigley in order to allow for entrance of the forks into the openings in order to lift the load support. It follows that for the purpose of this examination and the position taken, the limitations, adapted to be higher and wider than the prong of the stacker are interpreted in this instance as intended use language. The corresponding structure need not perform the intended functions, but rather, be capable of performing the intended use. In this case, with the teaching of Quigley, Roper's load support obviously has openings capable of being wider and higher than a prong of a fork lift or stacker.

19. As for Claim 25, Roper does not explicitly state two parallel openings are provided. Quigley is cited for teaching two parallel openings (B; See marked up Figure 2 above) being provided. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the load support of Roper so as to

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provide two parallel openings as taught by Quigley in order to allow for conventional fork-lift machines, which are known in the art to have two adjacent forks, to lift the load support.

20. As for Claim 26, Roper does not explicitly state a separation between center axes of said openings is between 340 mm and 400 mm or about 370 mm. Quigley is cited for teaching a load support device having spaced-apart openings wherein there is a separation between the center axes of the openings (B; See marked up Figure 2 above). Quigley, however, is silent as to the dimensions of the spacing. It would have been an obvious matter of design choice to form the openings with a separation between center axes of said openings being between 340 mm and 400 mm or about 370 mm, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237, (CCPA 1955). Therefore, it would have been obvious at the time of the invention to modify the spacing of the openings of the load support device of the Roper and Quigley combination to the range of 240-400 mm, or about 370 mm, to conform to the desired spacing of the fork-lift forks to be used to lift the load support as this is an obvious design choice well within the skill of an ordinary craftsman.

21. As for Claim 27, Roper does not explicitly state a height of said openings is more than 85 mm and a width of said openings is greater than 260 mm. Quigley is cited for teaching openings (B; See marked up Figure 2 above) in the legs (A; See marked up Figure 2 above) of the load support. Quigley, however, is silent as to the height and

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width dimensions of the openings. It would have been an obvious matter of design choice to form the height of said openings being more than 85 mm and the width of said openings being greater than 260 mm, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237, (CCPA 1955). Therefore, it would have been obvious at the time of the invention to modify dimensions of the openings of the load support device of the Roper and Quigley combination to a height greater than 85 mm and a width greater than 260 mm, to conform to the dimensions of the fork-lift forks to be used to lift the load support as this is an obvious design choice well within the skill of an ordinary craftsman.

22. As for Claim 28, Roper and Quigley do not explicitly state the dimensions of said openings correspond to standardized dimensions of transport pallets. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the openings (B; See marked up Figure 2 above) so as to form them with dimensions corresponding to standardized dimensions of transport pallets as a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237, (CCPA 1955). Furthermore, it would have been obvious at the time of the invention to modify dimensions of the openings to conform to the dimensions of the fork-lift forks to be used to lift the load support as this is an obvious design choice that is well within the level of skill of an ordinary craftsman.

23. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roper and Quigley as applied to claim 15 above, and further in view of Wharton (US Patent No. 3,702,100).

24. As for Claims 21 and 22, Roper and Quigley do not explicitly state said deck or said runners are reinforced by several ribs. Wharton is cited for teaching a deck (pallet of Figure 1) with legs (33, 37) reinforced by several ribs (m) (See Col. 5, Lines 44-48 and Figure 16). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the load support of Roper and Quigley so as to include several reinforcing ribs reinforcing the deck and runners as taught by Wharton in order to reinforce the channels and deck under lifting a large load.

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

26. Schwitzky, Sullivan, Colbert, Carlson, Higgins, and Feiner, disclose load supports.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL CALABRESE whose telephone number is (571)270-7862. The examiner can normally be reached on Monday - Thursday 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. C./
Examiner, Art Unit 3637

/Lanna Mai/
Supervisory Patent Examiner, Art Unit 3637